



DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS-2020-0009]

Guidance for Identification of Nonindustrial Private Forest Land (NIPF)

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: NRCS is requesting input about guidance it intends to provide its agency staff concerning the identification of NIPF for NRCS conservation programs. NRCS welcomes input from the public prior to NRCS incorporating the guidance into the NRCS conservation program manual. This guidance will be used by staff to identify NIPF and relates to eligibility for certain NRCS programs.

DATES: *Comment Date:* We will consider comments received by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments through the:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and search for Docket ID NRCS-2020-0009. Follow the online instructions for submitting comments.

All comments will be available on <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Martha Joseph; (814) 203-5562; martha.joseph@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

NRCS is one of the USDA agencies that identifies nonindustrial private forest land (NIPF) for program enrollment. In particular, NRCS identifies NIPF for enrollment in the Agricultural Conservation Easement Program (ACEP), the Conservation Stewardship Program (CSP), the Environmental Quality Incentives Program (EQIP), and the Regional Conservation Partnership Program (RCPP).

Identification for NIPF enrollment under these NRCS programs is based upon section 1201(18) of the Food Security Act of 1985 (the 1985 Farm Bill), which defines NIPF as rural land, as determined by the Secretary, that:

- Has existing tree cover or is suitable for growing trees; and
- Is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

NRCS recently attempted to clarify how it identifies NIPF for program enrollment in the fiscal years 2020 and 2021 RCPP Announcement for Program Funding (<https://www.grants.gov/web/grants/view-opportunity.html?oppId=328578>), by summarizing language from the USDA Forest Service's Forest Inventory & Analysis (FIA) glossary. NRCS used text that specified NIPF does not encompass industrial lands but the attempted clarification resulted in further confusion. After becoming aware of the confusion, the NRCS Acting Chief identified during a House Agriculture Committee hearing, on October 1, 2020, that NRCS would welcome input from stakeholders about how NRCS identifies NIPF, which is the purpose of this notice.

Identification of Land as NIPF

NRCS identifies NIPF as defined by the 1985 Farm Bill and program regulations. To make the identification, NRCS examines the components of the definition to determine if the land can be identified as NIPF, as explained below. In its identification,

NRCS must also ensure that such identification is consistent with how other USDA agencies identify NIPF under identical or similar program definitions.

In order to determine whether land offered for enrollment meets land eligibility criteria, NRCS must identify whether the land is “rural land” that “has existing tree cover or is suitable for growing trees” and whether the land is owned by “a nonindustrial private landowner.” NRCS has long identified land use in accordance with its National Resources Inventory (NRI). The NRI provides updated information about the status, condition, and trends of land, soil, water, and related resources on U.S. non-Federal lands, and identifies the four primary land types (forest, rangeland, cropland, and pasture) of non-Federal rural land. In particular, the NRI defines forest land as follows:

Forest land. A land cover/use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 4 meters (13 feet) tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cut over forest or abandoned farmland) and not currently developed for non-forest use. Ten percent stocked, when viewed from a vertical direction, equates to an areal canopy cover of leaves and branches of 25 percent or greater. The minimum area for classification as forest land is 1 acre, and the area must be at least 100 feet wide. See Glossary, 2017 National Resources Inventory, p. 8-3.

The NRI identification of forest land is consistent with how both the USDA Farm Service Agency (FSA) and Forest Service identify forest land for NIPF purposes, with some slight differences such as the Forest Service requires a canopy cover or crown cover of only 10 percent and a minimum area that is at least 120 feet wide.

The landowner component of NIPF identification is more complex as it relates to identification of whether the forest land is owned by a “nonindustrial private individual, group, association, corporation, Indian [T]ribe, or other private legal entity that has

definitive decision-making authority over the land.” FSA specifies in its Emergency Forest Restoration Program that owners or lessees principally engaged in the primary processing of raw wood products are excluded from the definition of an owner of nonindustrial private forest. NRCS refers to this criterion as the “mill status” criterion (that is, whether or not the applicant owns a wood-processing facility on their land).

The Forest Service identifies industrial versus nonindustrial private forest landowners for its FIA with reference to several factors that reflect current trends in the forestry industry. In particular, the Forest Service similarly identifies NIPF landowners with respect to their mill status but are also collecting information about whether corporate owners are “industrial” irrespective of mill status based on size of the landowner’s forest holdings. Based on a series of analyses the Forest Service conducted, they looked at owner behavior as a function of size of holdings. The Forest Service identified that holdings greater than 45,000 acres are associated with large corporate forest owners and that this acreage threshold provides a quantitative measure that assists with identification of industrial landowners in the FIA database. Specifically, the Forest Service analysis observed:

Many of the largest industrial forest owners, including many established timber companies, can be easily identified based on expert knowledge.

However, many cannot be so readily identified, particularly many holding companies and some TIMOs/REITs [timberland investment management organizations and real estate investment trusts]. Therefore, the most practical way to define large corporate forest owners using consistent methodology is to determine an acreage threshold above which a corporate forest owner will be considered to be a large corporate owner.¹

¹Caputo, Jesse; Butler, Brett; Hartsell, Andy. 2017. How large is large? Identifying large corporate ownerships in FIA datasets. Res. Pap. NRS-29. Newtown

NIPF Guidance

Therefore, from a practical manner in which to identify NIPF landowners consistently with both FSA and the Forest Service, NRCS intends to clarify in its conservation program manual the following guidance:

Nonindustrial private landowner means a private individual, group, association, corporation, Indian Tribe, or other private entity. NRCS will identify someone as a nonindustrial private landowner if they:

- (1)(i) Own fewer than 45,000 acres of forest land in the United States; and
- (ii) Do not own or operate an industrial mill for the primary processing of raw wood products as determined by NRCS in consultation with the State Technical Committees; or
- (2) Meet criteria established for a nonindustrial private landowner by NRCS in a State in consultation the State Technical Committee.

NRCS believes that item (1)(i) will ensure consistency with the Forest Service identification of owners of industrial private forest lands under its FIA. NRCS believes that item (1)(ii) will ensure continued consistency with both the Forest Service and FSA with respect to the role that the primary processing of raw wood products serves for identification of industrial landowners. However, NRCS is aware that with the advent of portable mills common among family forestry operations, a strict mill criterion may inadvertently exclude assistance to the very operations that conservation assistance for NIPF lands is intended to reach. Therefore, NRCS intends to incorporate in its guidance that such determinations about whether a mill is of industrial scale should be made in light of more localized criteria identified by the State Conservationist, in consultation with the State Technical Committee.

NRCS believes that incorporation of item (2) will ensure that NRCS national guidance does not supersede more localized expert knowledge that may exist for identification of NIPF landowners. In particular, NRCS believes that it should coordinate at the State level with FSA, Forest Service, the State Forester, and other members of the State Technical Committee in circumstances where the national criteria do not encompass adequately the nature of NIPF operations within the State.

Public Comments Requested

NRCS requests public comment on these technical criteria for the identification of NIPF eligibility for its conservation programs. In particular, NRCS seeks input about how these criteria may either exclude lands that should be considered NIPF or include lands that should not be considered NIPF. NRCS also welcomes input about what alternative criteria should be considered in its technical guidance.

The guidance for identification of NIPF will be adopted after the close of the 30-day period, and after consideration of all comments.

Kevin Norton

Acting Chief,

Natural Resources Conservation Service.

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